

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Wednesday, August 23, 2023
Reorganized Debtors.) 10:30 AM
)
SECURITIES PLAINTIFFS' MOTION
FOR THE APPLICATION OF
BANKRUPTCY RULE 7023 AND THE
CERTIFICATION OF A CLASS OF
SECURITIES CLAIMANTS FILED BY
SECURITIES LEAD PLAINTIFF AND
THE PROPOSED CLASS [13865]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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PG&E And Pacific Gas And Electric Company

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1 SAN FRANCISCO, CALIFORNIA, WEDNESDAY, AUGUST 23, 2023, 10:30 AM

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3 (Call to order of the Court.)

4 THE CLERK: Calling the matter of PG&E Corporation.
5 And I'll bring counsel into the courtroom now, Your Honor.

6 THE COURT: Thank you. All right. Why don't you make
7 your appearing when you come on? Mr. Slack, good morning.

8 MR. SLACK: Good morning, Your Honor. Richard Slack
9 from Weil, Gotshal & Manges for reorganize debtors.

10 THE COURT: Mr. Ritholtz?

11 MR. RITHOLTZ: Good morning, Your Honor. Jeffrey
12 Ritholtz for the claimants.

13 THE COURT: Ms. DiCicco, you're up next.

14 MS. DICICCO: Good afternoon -- or good morning, Your
15 Honor. Susan DiCicco from Morgan Lewis for the Oregon claims.

16 THE COURT: All right. Is Mr. Etkin signing in, Ms.
17 Parada?

18 THE CLERK: I will bring him in now, Your Honor.

19 THE COURT: All right. Ms. Dasaro?

20 MS. DASARO: Good morning, Your Honor. Stacy Dasaro
21 for MML Advisers, investment advisor to the MassMutual funds.

22 THE COURT: I think -- there we go. There's Mr.
23 Etkin. Good morning, Mr. Etkin.

24 MR. ETKIN: Good morning, Your Honor. Michael Etkin,
25 Lowenstein Sandler, for PERA. I would also ask Your Honor

1 that -- I think Mr. Dubbs is on.

2 THE COURT: I'm sorry. Who?

3 MR. ETKIN: Mr. Dubbs from Labaton.

4 THE COURT: Yes. Well, he needs to check in.

5 MR. ETKIN: Hopefully he's checked in in there and Ms.

6 Parada can bring him in as a --

7 THE COURT: Okay.

8 MR. ETKIN: Because he's --

9 THE COURT: You're going to make the principal
10 argument, or is he?

11 MR. ETKIN: He is, Your Honor.

12 THE COURT: Oh, okay. All right.

13 THE CLERK: I don't see a Mr. Dubbs that signed in,
14 but I do someone -- see someone that's raised a hand with the
15 number 281914. Would you like me to --

16 THE COURT: All right. Well, do you recognize that
17 number, Mr. Etkin?

18 MR. ETKIN: I don't. Is there an area code with
19 respect --

20 THE CLERK: No, no. Those are the only numbers.

21 THE COURT: Well, I see someone from PG&E, a Mr.
22 Cummings. And I see Mr. Schwartz and Mr. Canty.

23 Number 281914, I need to know who you are.

24 THE CLERK: Would you like me to allow the person to
25 speak, Your Honor?

1 THE COURT: Well, let's do this. 281913, if you're
2 Mr. Dubbs, put down your hand and then put it back up again.

3 THE CLERK: Mr. Canty also has his hand up. He's from
4 the same firm.

5 THE COURT: Okay. Let's bring him in then.

6 MR. CANTY: Your Honor, this is Michael Canty from
7 Labaton. That number is the password. I am assuming that Mr.
8 Dubbs put that in where his name was supposed to go. That's
9 just an assumption I'm making. So I would suggest that we let
10 that person in to determine whether or not that is Mr. Dubbs.

11 THE COURT: Okay. Is he going to make the argument or
12 are you, Mr. Canty?

13 MR. CANTY: He is. But I just wanted to make sure
14 that -- that number sounded familiar and I looked at the
15 password.

16 THE COURT: Okay.

17 MR. CANTY: And I believe that's the password for this
18 meeting. So he might have inadvertently put that in where his
19 name was supposed to go.

20 THE COURT: Well, Mr. Dubbs has appeared in this Court
21 before, and he's a known player, so I assume he's not a Zoom
22 bomber. If he is or --

23 MR. CANTY: There he is.

24 THE COURT: So we're all going to be embarrassed here
25 and upset. I hear his laugh. So 281914 is Mr. Dubbs. I think

1 he can change that to his name if he'd like.

2 THE CLERK: We can take care of that now that we know.

3 THE COURT: Mr. Dubbs, you're apparently one of the
4 star attractions here, so you need to turn your camera on and
5 make your appearance.

6 MR. DUBBS: How's that?

7 THE COURT: You're going to make the appearance for
8 the moving party, right?

9 MR. DUBBS: That's correct, Your Honor.

10 THE COURT: Okay. Well, just state your name for the
11 record.

12 MR. DUBBS: My name is Thomas Dubbs from the Labaton
13 firm on behalf of New Mexico, PERA.

14 THE COURT: Okay. And Mr. Dubbs, I recall your name
15 and your appearance. How are you dividing up your forty
16 minutes for rebuttal and primary argument? And then how are
17 you going to share with other counsel?

18 MR. DUBBS: We're going to take the forty minutes.
19 And it's going to be divided as follows: I'm going to speak
20 for ten to fifteen minutes. Then we're going to have three
21 institutional investors who've requested a short amount of
22 time: Mr. Irwin Schwartz, who represents CalSTRS for five
23 minutes, Ms. DiCicco who represents Oregon from Morgan Lewis
24 for two minutes, and Stacy Dasaro who has just appeared for one
25 minute who represents the MassMutual clients.

1 THE COURT: Okay. That's fine. Then I'll assume that
2 the four of you will be a little passe here twenty minutes or
3 so.

4 Why don't you go ahead and start your presentation?

5 MR. DUBBS: Thank you very much, Your Honor. May it
6 please the Court?

7 First, let us thank the Court for giving us some time
8 to explain these -- our position. I think we all believe that
9 this is a matter that should be expeditiously handled in a fair
10 manner. And even though we have different approaches to it, I
11 think we share that in common.

12 At the outset, let me begin by saying that what I want
13 to do in general is do a compare and contrast in my time as
14 between the different approaches.

15 Before I do that, I have one comment to make, which is
16 that I think that we've all been experiencing a bit of a
17 natural experiment the last few weeks. And if I can quote from
18 my colleague's briefs, which I'm sure they're familiar with,
19 this is their first brief on this issue. Line 13, page 1,
20 "Since PARA filed its third 7023 motion securities claimants
21 and the reorganized debtors have settled an additional 571
22 claims."

23 The 571 in that relatively short period is indeed
24 impressive. And I did some simple arithmetic, which I may have
25 gotten wrong, that if you screen out the cases settled or

1 disposed of by virtue of omnibus motions or otherwise, in terms
2 of real settlements, that's about sixteen percent of the total,
3 which in a short period of time is somewhat impressive and
4 leads to the question, since we have been told by PG&E that
5 this process has been computerized and they're sending out
6 offers of settlement on a regular basis, why the big sort of
7 rush at the end.

8 Now there's some procedural things in terms of timing
9 that may have led to this, but I think it's an equally
10 compelling inference that -- and it's been made clear that one
11 thing that PG&E does not want and does not want tremendously is
12 a competing class action. And they don't want to compete in
13 class action for a couple of reasons which I think are obvious
14 but need to be stated.

15 Number 1, they have to share control of the whole
16 process and they don't want to do that. And they've had from
17 the beginning of these proceedings of very tight control of the
18 proceedings, subject, of course, to the supervision of the
19 Court.

20 The other thing that they've had is they've had
21 secrecy, and secrecy, not in the invidious sense necessarily,
22 but in the sense that there's no price discovery. There's no
23 way that these people, when they get an offering, basically an
24 email off of a computer, that they have any idea of how the
25 offer is computed or what the baseline is that PG&E is using.

1 Whatever that may be, the point is that they like it that way.
2 And it's in their economic interest to like it that way, if
3 only because the longer that this drags on, the more tempted
4 claimants will be, particularly fiduciaries, that they have to
5 take something because after all, it may go away and they've
6 waited a long time and they want to wrap it up just like
7 everyone else wants to wrap it up?

8 So there are a number of reasons why they don't like
9 the idea of a class action, putting aside whatever procedural
10 hoops there may or may not be. And I think that's something
11 that the Court should keep in mind.

12 THE COURT: Now, Mr. Dubbs, what do I -- I mean, I
13 can't ignore that fifteen percent of the claimants have
14 settled. Whether it's out of fear or otherwise, they're still
15 settling consensually. What's wrong with that?

16 MR. DUBBS: There's nothing wrong with it. And I'm
17 not suggesting that they did anything wrong. I'm just
18 suggesting that the increase in speed may be due to many
19 features. And one of the features may be that, Your Honor, and
20 we are all here today talking about a potential class action,
21 and they are, to put it mildly, unhappy about that.

22 THE COURT: No, I understand that. And I'm going to
23 talk to you about the timeline that's in the reply brief, but
24 I'll let you go ahead and make your preliminary --

25 MR. DUBBS: Fine. No, I look forward to that. And

1 I'll get to that in a minute.

2 Let's talk first about -- because there's been a lot
3 of back and forth about opt-outs, opt-ins that that cluster of
4 issues.

5 Under our scheme, no one would have to, quote, opt out
6 until February and maybe later. So that gives --

7 THE COURT: Excuse me. That's what your brief says.
8 And if I take that as given, that's obviously the shortest time
9 you envision. So PG&E would obviously prefer later one. But
10 that means six more months of settlements that either they
11 might dwindle but they also might kick the fifteen percent
12 success rate which we all agree would not be bad.

13 MR. DUBBS: No, we don't. We don't disagree with that
14 at all. And that's sort of the risk that we are prepared to
15 take because we are betting, because it's historically been
16 accurate, they were never going to get one hundred percent of
17 these people to settle either due to the lassitude or the
18 People are doing other things or what have you. So there's
19 going to be a clean-up operation at the very least at the end.
20 And so we can offer to do that.

21 But that's not why we're in this. We're in this in
22 order to represent people who do not necessarily want a process
23 that's totally blind like this and would like some
24 representation that offers some hope of not only protecting
25 their rights, giving them a procedure they can put faith in,

1 and hopefully getting them more than what a email of off a
2 computer will give them.

3 So we think that -- and the rationale which we put in
4 our papers, which I'm sure the Court is focused on, is we
5 believe that it's necessary for PG&E to get some handle on the
6 opt-outs before they make their last and best and final offer
7 so they can have some handle on the contingent liabilities from
8 the opt-outs. Now, we can --

9 THE COURT: Mr. Dubbs, whether it's a computer or Mr.
10 Slack sits there at his desk with this New York Yankees poster
11 behind him or Chicago Cubs poster, let's assume whether it's
12 either Slack or a computer, somebody will turn down the last
13 offer and that'll be the end of that process. And then it'll
14 perhaps go to a mediator, and that might get rid of a few more.
15 But then there'll be another group. Let's assume that the RKS
16 group, which is represented by experienced counsel and
17 represents a huge chunk -- let's assume they don't settle and
18 they don't want that -- they'll opt out. So what have we done
19 for that group? They don't this procedure. And they're not
20 likely to opt in, at least I doubt -- I mean, excuse me,
21 they're more likely to opt out. Right? It's that all correct?

22 MR. DUBBS: Those assumptions are correct. And I
23 think the answer to the implicit question is what happens to
24 RKS and how does RKS dovetail in with what we have planned?
25 And the answer to that is if we go on and take the next step,

1 which is to motion practice and preparing for trial, they would
2 be part of that that structure. And that's been happened --
3 that happens in other cases with substantial opt-outs. I mean,
4 I had the largest opt out in the WorldCom case, which is a huge
5 bank that had a several hundred million dollar position. And
6 they didn't allow --

7 THE COURT: I understand. I understand. But again,
8 mam I correct -- correct me on this. And I don't -- I think
9 both sides have convinced me that I have to make a decision on
10 if I grant this procedure at all, I have to do, do we go
11 opt-out, opt-in? And I think perhaps the more persuasive
12 argument is opt-out.

13 So let's assume according to your outline the opt-out
14 deadline is February 19th. But some hypothetical person may
15 functionally opt out tomorrow, right?

16 MR. DUBBS: That's correct.

17 THE COURT: Okay. And based upon at least the way the
18 briefs have been suggested, that person can't come back in.
19 Correct?

20 MR. DUBBS: They can't come back in unless there's
21 exigent circumstances which is something more than I don't like
22 the bargain on the table.

23 THE COURT: No, I understand. I understand. That's
24 right. So you and your colleagues go through this procedure.
25 And come February or March or whatever, there is a negotiated

1 settlement to produce a certain recovery to the class members.
2 And if somebody who is a member of the RKS group hasn't opted
3 out, then that person has an option to take that settlement or
4 opt out by the deadline. But if someone has already opted out,
5 they can't get back in. They're excluded from the party,
6 right?

7 MR. DUBBS: Well, they've excluded from the party, but
8 they've had an invitation to the other team's party for six
9 months. And so, you know, they know what they're doing.

10 THE COURT: No, that's right.

11 MR. DUBBS: And they're going to be -- they're going
12 to be part of The ADR mechanism. And presumably they'll then
13 have been through one, if not multiple mediations, before they
14 have to opt out. Though Your Honor is quite right. You can
15 have in effect an informal opt out before then, at which point
16 they are sort of writing both horses.

17 THE COURT: Well, no, but I -- look, I like to think
18 that regardless of what a computer does, if we get -- for any
19 particular claimant we get to the mediation stage, it will be a
20 real live mediator, not a computer. And that mediator will
21 suggest an outcome. And it will be perhaps not accepted and
22 then that's the end of it. Then I believe that claimant is in
23 what Mr. Slack will call the pool for testing this thing on the
24 merits, the so-called substantive objection.

25 MR. DUBBS: That's true.

1 THE COURT: Okay.

2 MR. DUBBS: That's true. But that's where the -- just
3 to footnote that point, because I think it's important, that's
4 where the schedule and in terms of Mr. Slack's scheduling of
5 procedural motions and the schedule in terms of opting out
6 somehow somewhat coalesce in that you're going to opt out in
7 about the same time frame as he's going to start filing the
8 motions and before you have to answer the motions. So you
9 don't have -- so he can be -- Mr. Slack will probably have a
10 pretty good idea by that time who's in and who's out.

11 THE COURT: That's right. And I think unless Mr.
12 Ritholtz's 900-and-some-odd clients have a change of heart,
13 they've made their position pretty clear. They're not going
14 to -- they're going to be opting out again. I'm not
15 committing. They can all change their mind. But at least at
16 the moment, their public statement is that they are not in
17 interested in your class approach. Right?

18 MR. DUBBS: That's fair. They have made it fairly
19 clear they're sailing their own boat, their own direction.

20 THE COURT: Okay. So they will -- any one of them,
21 there's hundreds of them, but they will go through the offer
22 and encounter procedure. If that doesn't solve it, they will
23 go through the mediation procedure. If that doesn't solve it,
24 then they're in for the long haul for the fight.

25 MR. DUBBS: They're in for the long haul. And we'll

1 see what happens.

2 And just apropos of that, as Your Honor may have
3 noticed, and it's a bit unorthodox, but we have put into
4 towards the tail end of this process a compulsory mediation
5 where the class or the putative class and Jeanie Mediate under
6 the under the umbrella of one of the mediators that you've
7 picked.

8 Now, we've had multiple mediators in other large cases
9 and it tends to work. Eeen though some people think it's
10 counterintuitive, it works for whatever reason.

11 THE COURT: But That's true. But that's true even
12 outside of bankruptcy. I'm sure you know better than I. Most
13 class actions end up in a mediated settlement, don't they?

14 MR. DUBBS: Absolutely. And my only point is that a
15 lot of -- I take back a lot. A substantial number of them end
16 up there with multiple mediators at that point. That's the
17 only point I'm going to make.

18 THE COURT: Okay. Okay. Okay. But my point is
19 whether it's multiple mediators or one magic mediator, a lot of
20 them get solved around the table, not in the courtroom. And
21 maybe some class actions go to trial, but am I correct, not a
22 great number?

23 MR. DUBBS: An infinitesimal number get tried.

24 THE COURT: Okay. Got it. All right. Go ahead with
25 whatever you address. I have a couple more specific questions,

1 but I don't want to cut into your time.

2 MR. DUBBS: Fine. And now I would --

3 THE COURT: Too much.

4 MR. DUBBS: Well, that's okay.

5 I have a couple of other compare-and-contrast that I
6 note. And we can get into it in more detail based upon any
7 questions the Court may have or anything else.

8 Mr. Slack's criticism of our structure has as one of
9 its pillars the fact that a motion to dismiss has to be made
10 before you can certify the class. And that's simply not true.

11 Now, on Mr. Slack's side of the table, it is true that
12 current class action process often does it that way, but that
13 doesn't -- that's not holy writ that comes down from anyone.
14 And indeed, some of us have been doing this for a while
15 remember when the class was done before the motions to dismiss
16 because the clients were saying let's get the class certified,
17 we may not like it, but if it gets certified, that's not so bad
18 because we're going to win the motion to dismiss, and that's
19 going to be raised to all these people, not just a few, but all
20 of them. And that's a good thing. So there's nothing written
21 that you have to do the motion to dismiss process before you
22 can do the class process, number 1.

23 And number 2, there are -- Mr. Slack is going to raise
24 some has raised his papers a parade of horrors about all the
25 problems that have to go through before you can certify class.

1 And I'd just like to address a couple of those off the top, and
2 we can get into the details of that if we want to or need to.

3 As Your Honor is aware, the class action process has
4 as one of its key pivot points of dealing with the issue of the
5 efficient market hypothesis and whether there's a presumption
6 that there was reliance by the class.

7 THE COURT: Right, right.

8 MR. DUBBS: Because -- and the comeback to that is the
9 presumption gets rebutted under a theory that has now been
10 enshrined by the Supreme Court called price impact which is a
11 bit of a misnomer and really is two concepts folded into one
12 label. And one concept is basically a materiality, though it's
13 not called that. and are the statements material. And if
14 there's a question as to whether the material, then the recent
15 case law presents a balancing test for the Court.

16 So it ends up being, as it almost always has been in
17 common law fraud, a bench question as to whether the statement
18 is material or is puffery or something else.

19 THE COURT: It sounds like a 12(b)(6) issue.

20 MR. DUBBS: Well, it could be a 12(b)(6) issue. And
21 that's one of the things about it. But it comes up more
22 frequently in the class action context.

23 THE COURT: Oh, I understand that. But we have an
24 anomaly here. We have a very, very robust procedure that's
25 been in place for three years. And you want me to depart from

1 it and add the second one. And I'm just trying to figure,
2 okay, what does that do? And it seems to me that what Mr.
3 Slack calls his sufficiency hearings, you call your price
4 impacts, whatever you call them. And I say sounds like a
5 12(b)(6). Maybe I'm wrong, and I apologize to the class
6 action --

7 MR. DUBBS: No. I mean, there's an overlap between
8 the two. There's no question about it. But if it's in the
9 class action format, it applies to everyone's. That's a res
10 adjudicata point which may be too technical for these things.
11 And yes, the same analysis comes up in the 12(b)(6).

12 THE COURT: Well, let me rephrase my question. In
13 looking at the timeline I use, your timeline begins with -- or
14 I'm sorry, yeah, discovery requests to you. And the next thing
15 is experts from the debtor and so on. I don't see -- I don't
16 see where something is briefed before the certification
17 hearing.

18 So in other words, you're telling me now that the law
19 would permit what I'm going to call this price impact motion,
20 whether it's correctly at 12(b)(6), it's a something, it's a
21 legal ruling that that the Court could issue before we get to
22 the question of whether there's certification. Is that --
23 again, am I correct or have I got that backwards?

24 MR. DUBBS: No, you have it essentially correct. It's
25 necessary a prelude to certification.

1 THE COURT: Okay. So with that in mind, Mr. Slack
2 from his from his point of view, says we like to have these
3 sufficiency hearings which, again I think is code for 12(b)(6),
4 but I could be wrong.

5 So if I adopt your procedure promptly, it's still
6 going to be several months. So we've all agreed and you've
7 conceded that in the several months between now and looking at
8 your timeline now and certainly before it gets to a mediator,
9 there's plenty of time for more folks to settle without ever
10 coming to the class table. But that the end of that process,
11 the certificate -- excuse me, the ADR procedure will likely
12 peter out. Some say it'll be the end if I even grant this
13 motion. I don't know that I believe that. But at some point,
14 it seems to me that I have to preside over a contest over the
15 sufficiency that Mr. Slack would argue and the issues that
16 you've identified. And they seem to be so similar that they
17 ought to be somehow consolidated.

18 So if you're a -- if you're a class proponent -- or
19 let's -- I seem to have enshrined in the culture and the lore
20 of this case my, 10,000-dollar claimant from Peoria, and I'll
21 use Mr. Ritholtz as representing a hedge fund who's got a
22 five-million-dollar claim. It seems to me that whether I'm
23 listening to the sufficiency of a five-million-dollar hedge
24 fund claim or Joe's 10,000-dollar claim, I have to still deal
25 with the same legal issues. Again, am I right in saying that?

1 MR. DUBBS: You're partly right, but you have
2 something wrong which is that --

3 THE COURT: Okay.

4 MR. DUBBS: -- which is that price impact does bear
5 resemblance certainly in terms of its ultimate question or
6 ultimate answer to a 12(b)(6) motion to dismiss a claim on the
7 basis of lack of materiality. However, there are two tests
8 under the price impact case law. And one of them is
9 fact-intensive and expert-intensive. So the standard that one
10 addresses a 12(b)(6) motion which is a statement has to be such
11 puffery that you can dismiss it out of hand forever and ever is
12 a lot different than a statement where the question is did this
13 statement have market impact, did this statement, the
14 revelation of which the truth underlying it, made a stock drop
15 of potentially hundreds of millions of dollars.

16 THE COURT: Okay. I understand.

17 MR. DUBBS: But the latter is a lot more
18 fact-intensive than a 12(b)(6) motion that goes to, you know,
19 is this puffery? And you know, if besides this is a great use
20 car, it's hard to say what would really, truly be puffery in
21 these circumstances.

22 THE COURT: So what you're conceding and you're
23 correcting me politely that if we all learned in first year
24 civil procedure that a 12(b)(6) motion takes the facts as true,
25 we can't take the facts as true when there's a fact question

1 because of experts. And I concede that I wasn't clear on that
2 or I didn't fully understand that.

3 But you also seem to say that I can hear the testimony
4 of the experts and make essentially a determination of the
5 impact and then proceed to what's -- what I'll call the more
6 traditional 12(b)(6) analysis. Right?

7 MR. DUBBS: Well, yes. I think it's a practical
8 matter in the real world. If you say there's no price impact,
9 then in the real world, unless we all go back to the drawing
10 board, the odds of certification diminish rapidly.

11 THE COURT: Okay. So if there were --

12 MR. DUBBS: And that --

13 THE COURT: If there were never a bankruptcy and you
14 were -- and you'll have to you'll have to face this market
15 impact issue if this matter is litigated in the District court
16 anyway, correct?

17 MR. DUBBS: Yes, if we ever get to the District court,

18 THE COURT: Okay. Well, don't blame me for that. I
19 got it. Mr. Dubbs, let me let your colleagues have their share
20 of the time. And then I promise you you'll have a full time
21 when it's your turn to respond for what's left. I'm going to
22 stick with close to the time, but I am taking some of it away
23 from you so I promise to give it back.

24 MR. DUBBS: All right. Well, why don't we go to Mr.
25 Schwartz first?

1 THE COURT: Mr. Schwartz, good morning.

2 MR. SCHWARTZ: Good morning, Your Honor. Irwin
3 Schwartz on behalf of CalSTRS, New York Common Access Teachers,
4 Pension Reserves Investment Management Board of Massachusetts,
5 and a number of Hartford entities. I would like to reserve my
6 time and use it in a rebuttal.

7 THE COURT: Okay. I think have, Ms. DiCicco, you're
8 going to speak.

9 MS. DICICCO: I would like to, Your Honor. Thank you.

10 I agree with Mr. Schwartz. My intention was to --
11 since I only have a couple of minutes, literally a couple of
12 minutes, I wanted to reserve my time to the end after Your
13 Honor has asked all your questions and the parties have all
14 addressed the issue. So my --

15 THE COURT: Okay.

16 MS. DICICCO: If it's okay with you, I'd prefer to do
17 that.

18 THE COURT: Ms. Dasaro?

19 MS. DASARO: Hi. Stacy Dasaro for MML Adviser.

20 I share the sentiments of Mr. Schwartz and Ms. DiCicco
21 and would like to reserve my time for rebuttal.

22 THE COURT: I was in a BAP panel one time where
23 everybody said they agreed their time for rebuttal and the
24 other side said that we don't have any argument to present.
25 And I'm guessing that got ignored. So Mr. Slack, here's the

1 chance to shut up the opposition, just submit.

2 Okay. Mr. Slack, you're up. And you're going to
3 share some time with Mr. Ritholtz, I believe.

4 MR. SLACK: We're going to we're going to share thirty
5 minutes to ten minutes, Your Honor, and I'll start first.

6 THE COURT: Okay.

7 MR. SLACK: So, Your Honor, when the Court implemented
8 the security procedures two and a half years ago, it rejected a
9 class-based resolution in favor of individual securities
10 claimants prosecuting their own claims. The Court decided that
11 the securities claimants were capable of making their own
12 decisions, including filing claims, deciding when to settle
13 with reorganized debtors. And that decision was right then and
14 remains right today.

15 Your Honor, just two months ago, Your Honor said --
16 and I think it was right then, Your Honor said, I believe and
17 still believe that for a lot of reasons, the bankruptcy claims
18 process is preferable to the class action process. And I'd
19 like to think that I and the debtors, over the objections of
20 PARA and counsel, chose a procedure that was more suited to the
21 bankruptcy world. And I still believe that's true.

22 And class certification right now is an even worse
23 idea now that we know that the procedures that Your Honor put
24 in place are working and the new amendment and objection
25 procedures will work to resolve whatever's remaining.

1 And, Your Honor, just upfront, there's been a lot of
2 discussion about Rule 23 in class certification. And I think
3 even from the argument that Mr. Dubbs made, it's absolutely
4 clear that the decision today is not whether to certify a
5 class, because if the Court were to decide let's start this
6 process in motion, there's going to need to be a process for
7 class certification. And constitutionally that's going to be
8 an evidentiary type of hearing. And I'm going to get to that.

9 And so what the parties don't really agree on is the
10 length of time that's going to be required for this class
11 overlay because there's no question that there's --

12 THE COURT: Mr. Slack, I'm on board with you. And Mr.
13 Dubbs virtually conceded that there's probably a minimum six
14 months, six months of the current ADR options before his
15 proposal kicks in. But the point is, if I don't start it,
16 it'll -- it won't start.

17 MR. SLACK: Yeah. Let me just say, Your Honor, it's
18 not six months. It's going to be to do this correctly
19 somewhere between a year and a year and a half. And I'll get
20 to that because --

21 THE COURT: I understand that. I understand that you
22 and he differ about the time frame, but my guess is, under your
23 procedure, whether it's six months or eighteen months, it
24 doesn't start yet. And his procedure, it starts. Okay. I got
25 you.

1 MR. SLACK: It is true that it would start. And let
2 me just say, Your Honor, I think that the two things that that
3 are critical here, number 1, it's important to note that the
4 procedures are absolutely working. And Mr. Cummings can put
5 on -- I just want to -- even since Friday, if Mr. Cummings can
6 put on the new statistics, we have -- the reorganized attorneys
7 have now successfully resolved 5,883 claims or two-thirds of
8 the securities claims. In over the last three months, there's
9 been over 1,000 securities settlements. That's more than ten a
10 day. And since Friday, since we put in our submission, there's
11 been an additional sixty-eight claims settled and 176 claims
12 resolved through the Court's granting of an omnibus objection.

13 And in addition, Your Honor, there's been fifteen
14 mediations that have been -- that have been put in place, that
15 have been noticed, and those cover 300 -- or more than 300
16 claims.

17 And, Your Honor, so the key is this, is that the Court
18 has recently adopted the amendment and objection procedures.
19 And those procedures were already sent out to every single
20 securities claim. And these were heavily negotiated. And in
21 addition to setting a deadline for the organized debtors to
22 object to securities claims, they also provide a framework for
23 resolving everything.

24 And let me tell you how things get resolved and why
25 you don't need a class action here by any stretch. The plan to

1 resolve the remaining 2,900 claims under the procedures is
2 straightforward. First, let's take out the 700 claims of the
3 RKS Group because those are already collectively being done.
4 So there are about 2,200 unresolved claims. All of them have
5 now received offers.

6 Here's an important statistic, Your Honor. And this
7 isn't a new statistic. It's been consistent, and we've told
8 you this before. When you take out RKS, approximately ninety
9 percent of the claimants who review their offers end up
10 settling. That's been consistent since the very beginning of
11 this process, Your Honor. We're getting approximately ninety
12 percent of everybody who reviews their offers to end up
13 settling with us.

14 THE COURT: We agree that -- let's just take your
15 chart and just do a linear projection. And I don't want
16 another chart. I'm just taking your word for the moment
17 they're settling at ten a day. So if we go ten a day for the
18 rest of the year, maybe that's optimistic, but there'll be a
19 lot fewer obviously, the pure math. But there will be some
20 little guys. My Joe from Peoria might not accept the
21 500-dollar offer that you made hypothetically. And he may not
22 accept the 1,000-dollar offer that the mediator might try to
23 twist his arm on. And then he will be stranded in Neverland
24 unless he has some recourse to the class action.

25 but on the other hand, I'll say it -- I'll

1 acknowledge. on the other hand, Mr. Dubbs and Mr. Etkin will
2 be out of work if we end up with such an infinitesimal number
3 of people left that it simply doesn't make economic sense to
4 invoke the class procedure.

5 So why should I strand the little guys without at
6 least A hope that they're going to be protected under the
7 alternative that the class suggests?

8 MR. SLACK: Yeah. So two things, Your Honor. There
9 are no -- you say there are little guys. but the fact is, Your
10 Honor, as Your Honor is recognized from the very beginning of
11 this process, we are dealing here with no absent class members.
12 Everybody here has filed a proof of claim, has provided
13 information. At least most of them have provided information.
14 And so we're not dealing here with absent class members.

15 And the fact is, Your Honor, there is not a single
16 class, a single class ever certified of people who have
17 actually filed claims, not a single one, zero. Okay?

18 THE COURT: I understand.

19 MR. SLACK: And the fact is, the reason for that is
20 the class mechanism is designed to deal with absent class
21 members, not class members who have already filed claims
22 potentially with their own counsel.

23 And so the point, Your Honor, is, is that the
24 procedures that we set up, the amendment procedures, actually
25 deal with this, because what's going to happen, Your Honor, is

1 that we've told folks, we've already sent this out, you don't
2 settle, that's fine. You can now amend your claim. If you
3 don't amend your claim, you're likely to get a sufficiency
4 objection. If you do, you're likely to get a sufficiency
5 objection.

6 THE COURT: Well, I understand that. I understand
7 that, Mr. Slack.

8 MR. SLACK: And so the point is, is that we're going
9 to be filing these sufficiency objections. And we think that
10 people who don't amend, we think we're going to win those.

11 THE COURT: But this the sufficiency objection what I
12 call the 12(b)(6) motion?

13 MR. SLACK: It is. Exactly, Your Honor.

14 THE COURT: Okay. Okay. So --

15 MR. SLACK: That's exactly the case.

16 THE COURT: So again, I want to take my claimant who
17 filed a claim -- we have a closed universe. I understand. And
18 this is not the District Court. This is a closed universe.
19 And I take your word for it, the finite number of claims. And
20 I take your word for it because I thought so too. This hasn't
21 been done before in a bankruptcy context.

22 But my concern here is not that Mr. Ritholtz and his
23 sophisticated clients will need his services and can duke it
24 out with you around a mediation or in a courtroom. It's the
25 guy who is the little guy who doesn't have a counsel. And his

1 only recourse to judgment here is to fight off your motion that
2 he's not even a lawyer to defend. And it seems to me that that
3 remedy is an alternative that isn't such a bad thing for the
4 little guys who might be the beneficiaries of the class
5 procedure. So tell me what's wrong with that thinking.

6 MR. SLACK: Well, I think what's wrong with that
7 thinking is that it's directly opposite what the claims process
8 and bankruptcy does, which is -- and Your Honor has said this
9 himself. I wish I knew you were going to say that because I
10 would go back and quote Your Honor to yourself which is --

11 THE COURT: That's okay. You can do that. I believe
12 you.

13 MR. SLACK: -- these folks are not -- in the
14 bankruptcy process are not considered little guys. Everybody
15 who files a claim is presumed to be able to deal with their
16 claim and prosecute it. And that's the way it is. And so yes,
17 people will have to deal with their sufficiency objections.
18 And what they can do of course, any one of them, can hire Mr.
19 Dubbs and Mr. Etkin or hire any other counsel and they can --
20 nothing is stopping them. So the point is, is that the
21 bankruptcy process allows everybody to prosecute their own
22 claims.

23 THE COURT: What would happen if I told the U.S.
24 Trustee to appoint a securities claimant committee now? And
25 that's --

1 MR. SLACK: But the --

2 THE COURT: Pardon me?

3 MR. SLACK: I'm not even sure I understand how that
4 would work, given that you've got claimants who are clearly
5 prosecuting their own claims, settling their own claims.

6 THE COURT: Wait a minute. Wait a minute. I didn't
7 ask you -- I didn't ask you whether it was good idea. I ask
8 you do you think it's legally a permissive idea. In other
9 words, I took a check of the Bankruptcy Code today. And the
10 Bankruptcy Code says that the Court can direct the appointment
11 of a committee. And I don't know -- it doesn't seem to say,
12 but not until confirmation. I don't know that.

13 But whether if we have 2,000 securities claimants --
14 and one of these things that we keep hearing, they can hire
15 lawyers. If the Bankruptcy Code lets me direct the appointment
16 of an official committee of securities fraud claimants, is that
17 legally an option that's available? Which, by the way, Mr.
18 Slack, might be an easy way to end run the class action. It's
19 just have a committee at the table, I must say, paid for by
20 your client but representing the little guys who --

21 MR. SLACK: Yeah, I --

22 THE COURT: -- who filed a claim.

23 MR. SLACK: I don't think it's --

24 THE COURT: Pardon me?

25 MR. SLACK: I don't think, Your Honor, that it

1 would -- given the success of the procedures Your Honor has put
2 in, I don't think that it would be either appropriate or
3 efficient to do that. And it's a little bit of a head
4 scratcher.

5 And here's the thing, Your Honor. There's some idea I
6 think Your Honor is proposing that somehow the class --
7 starting this class process can sit side by side with Your
8 Honor's procedures. And there are four reasons why that just
9 simply is not the case.

10 And first, Your Honor, the existence of the
11 possibility of a 7023 class will almost certainly chill the
12 settlement process. And there's that.

13 THE COURT: How do I know that? But you keep saying
14 that. But why do I understand that's true?

15 MR. SLACK: Well, let me give you two pieces of
16 information, Your Honor. And I'm happy to put in a declaration
17 if Your Honor needs it. But we've heard from multiple
18 claimants who have pushed off their response to our offers
19 because of the existence of the 7023. And we received a letter
20 from one claimant who was noticed for mediation who said they
21 wanted to postpone the mediation specifically because of the
22 existence of the 7023 and said specifically that they -- that
23 if the 7023 were granted, it would alter their approach to the
24 mediations. There is absolutely no question that the existence
25 of the 7023 will grind this to a halt.

1 The second thing, Your Honor, is it relates to the
2 confidentiality. The whole point of the procedures here was
3 that settlements are confidential. And what that means is that
4 fiduciaries and pension funds and the like, they can settle
5 without the risk that there's going to be a public settlement
6 later on that somebody's going to be able to measure their
7 settlement against. And if we --

8 THE COURT: That's true -- Mr. Dubbs, come on. Don't
9 laugh.

10 That's true in any settlement. Right?

11 MR. SLACK: But no. But it is. And so the point,
12 Your Honor, is that here you had a specific confidential
13 process. And again, we've heard from the pension funds and
14 other types of fiduciaries that that they need to -- they don't
15 want to answer even our offers while this is on the table. So
16 the fact is, is that given the success -- and here's really the
17 point, Your Honor. Given the success of the ADR procedures, it
18 makes no sense to put this overlay if it in the slightest way
19 risks derailing a process which is clearly working. The
20 second --

21 THE COURT: Well, Mr. -- I have to question the
22 following. Again, I'm sorry to always go back to my
23 hypotheticals, but I like my hypotheticals.

24 So if our friend from Peoria said PG&E offered me
25 1,000 dollars and I don't want to settle for 1,000 dollars, so

1 I think I'll wait six months or Slack says eighteen months
2 until Mr. Dubbs brings in a more favorable settlement proposal,
3 and my first response to that guy is fine, you'll get nothing
4 for eighteen months no matter what. But if you accept PG&E's
5 offer, admittedly it's smaller than you want, you'll get it
6 tomorrow. So make your choice. So that's my communication
7 with that hypothetical guy.

8 And the other hypothetical guy is not hypothetical.
9 It's Mr. Ritholtz. And Mr. Ritholtz I don't believe -- he can
10 tell me in a moment -- that if I grant today's motion, that his
11 clients will shut down any further discussion with you about a
12 mediated settlement or a litigation because I just don't
13 believe it. And if he tells me they will, I guess I'll believe
14 him because he's not going to lie to me. But I don't think he
15 will say that.

16 So anyway, go ahead with the rest of your time. And
17 then I wanted you to share your time with Mr. Ritholtz on --

18 MR. SLACK: I mean, Your Honor, I don't think the
19 issues with what RKS is going to do. And if you look at the
20 People who are supporting the 7023, it sort of goes to the
21 point that these, in fact, are the people who are fiduciaries
22 who are not going to settle with us while these are in place.
23 And so --

24 THE COURT: But that's their choice. That's their
25 choice. And if my hypothetical guy says, yeah, I'll settle,

1 I'll take \$1,000 and you say, yeah, but you can't tell anybody.
2 And he says, fine, I won't tell anybody -- so my settling
3 claimant won't tell anybody. So how does that impact the
4 fiduciary obligations of all these other counsel that represent
5 pension funds?

6 MR. SLACK: So here's the way --

7 THE COURT: they don't know what Joe settled for.

8 MR. SLACK: Yeah, here's the point, is that if you
9 have a class and you ultimately have a class settlement, that's
10 going to be public. And they're not going to be willing to
11 settle if they're going to get -- if they're going to get
12 criticized for they don't know. The point is, they don't know.
13 And until they know what that class settlement is, they're not
14 going to settle. And you're going to take a process that's
15 working and you're going to risk grinding it to a halt. And
16 that's not -- that's not a good thing.

17 THE COURT: At least three experience counsel here in
18 this hearing have stated in record that they want the class
19 action. One experienced counsel, RKS counsel, said, no, we
20 don't want it. So that tells me that at least if the lawyers
21 speak for their clients, that the RKS clients will still sit
22 down at the table with you or at the computer with your
23 computer and attempt to settle this case. And maybe Ms.
24 DiCicco and Ms. Dasaro and the other counsel, maybe they will
25 settle, maybe they won't. But at least their stated view is I

1 want to have the option of doing the class. I can't ignore
2 those realities.

3 But go ahead and finish your presentation. And then I
4 will shut up till Mr. Ritholtz has his chance.

5 MR. SLACK: Yeah, well, I've got a couple of things
6 that are really important, Your Honor.

7 But what I'll say is this, Your Honor. If these folks
8 want to hire PARE's counsel, they can. Go do it. Let's act
9 collectively and do it. There's nothing that stops them.

10 But look, here's the other thing, Your Honor. There's
11 four reasons why this is inconsistent. I've gotten to one.

12 The second one is the class process introduces
13 immediate and extensive merits litigation and discovery into a
14 process that will this is going to be messy. It's going to be
15 intensive. And it's going to divert the attention away from
16 settlement. And it's not an accident --

17 THE COURT: Okay. I understand.

18 MR. SLACK: Let me just say, it's not an accident,
19 Your Honor, that the amendment and objection procedures start
20 by saying the objectors of guidepost support the reorganized
21 debtor's efforts to continue to resolve as many securities
22 claims as possible through the ADR procedures. And therefore,
23 there is no discovery, no discovery until a court decides the
24 sufficiency objections. And that won't happen until the
25 beginning of next year. And that's to allow this process to go

1 forward without extensive discovery and litigation. And what I
2 can tell you, Your Honor, is that -- this process that they're
3 seeking is going to be extraordinarily intensive in terms of
4 the amount of discovery and time it's going to take. And
5 that's the third --

6 THE COURT: Mr. Slack, if I had granted the original
7 motion, you could have made the same argument and it would be
8 true. And it's true in any class action I presume. And if the
9 if the class action resumes in the District Court, it will
10 happen there. So I don't know why it's different here except
11 that you and your client are getting a lot of these things out
12 of the way. So every one of those ten people that settled,
13 maybe somebody settled during this hearing. And so that's a
14 little cheaper for PG&E to worry about it. And it's one less
15 member that Mr. Dubbs will never get to represent.

16 But I don't -- so what if it's expensive? Class
17 action litigation is expensive, duh.

18 MR. SLACK: It's not the expense, Your Honor. What
19 you're doing is that you're going to take a process where I
20 think the parties, even the negotiated parties, said we're not
21 going to have discovery or any kind of merits litigation while
22 the procedures are going in place. And that is a fundamental
23 part of these procedures. And what's going to happen here is
24 exactly the opposite.

25 So let's talk about the schedule, because there was a

1 lot of discussion with Mr. Dubbs about the schedule. And that
2 schedule just doesn't work in any stretch of the imagination.
3 We talked about -- Your Honor talked about and Mr. Dubbs talked
4 about the fact that class certification takes place after a
5 sufficiency hearing -- or after a motion to dismiss. Mr. Dubbs
6 says it's not required.

7 Here's what I'm going to tell you, Your Honor. It is
8 required. And the reason that it's required after the PSRA is
9 that what you do after the Supreme Court decisions that say
10 this is all an evidentiary hearing is the sufficiency hearing
11 tells you what securities and what claims survive. And until
12 you know that, until you know that and it's on a claim-by-claim
13 basis, until you know that you can't deal with the issue of
14 price impact or any of the basic issues. When I say Basic
15 issues, -- when I say Basic, Basic v. Levinson issues, because
16 those are done on a security-by-security and claim-by-claim
17 basis. So we cite, Your Honor, in our papers the Goldman case,
18 which is a Supreme Court case.

19 THE COURT: I'm aware of it.

20 MR. SLACK: And what they say, what the Supreme Court
21 has said is that the defendant has an absolute right to rebut
22 the presumption of reliance by showing that an alleged
23 misrepresentation did not actually affect the market price in
24 the stock. That is not a legal issue. That is a factual
25 issue. And, Your Honor, what we put in on page eighteen of our

1 supplemental submission is a series of bullets of the type of
2 evidentiary issues that are going to come up.

3 In the Goldman case, for example, there were three
4 experts by the defendants on different issues and one expert
5 for the plaintiffs. So this is not a hypothetical issue where
6 you're just going to say we can have two months of discovery
7 and get this out of the way.

8 In fact, Your Honor, if you take a look at other
9 cases, and I'd like Mr. Cummings to put a chart up, each of
10 these cases is a recent case. And it shows you what is the
11 amount of discovery, class briefing, and then time for decision
12 in securities cases. Each one of these, the earliest -- and
13 this has nothing to do with the class notice or sending out the
14 class notice or letting people opt out. The shortest time
15 frame here is eleven months.

16 THE COURT: Is that document in the record? Is that
17 on the docket?

18 MR. SLACK: It's just reciting, just as if I were
19 reciting this and I went to the docket, Your Honor, in oral
20 argument. The fact is, is that this is a rebuttal to what we
21 heard in Mr. Dubbs's -- both in his argument and in their
22 submission. And we're happy to put this on the docket, Your
23 Honor. But we have the citations to all of this. And it's
24 just -- it's all public record because it's all orders.

25 THE COURT: No. I believe -- Mr. Slack, slow down. I

1 believe everything you said. I just want to know if I should
2 try to print a copy here in my home or should I get it from the
3 docket. That's all. Maybe I just --

4 MR. SLACK: We haven't put it on the docket yet Your
5 Honor, but we can do that. The point, Your Honor, is --

6 THE COURT: Put it on the docket after the hearing.

7 MR. SLACK: We will do that, Your Honor.

8 THE COURT: Okay.

9 MR. SLACK: The point is, is that the shortest time,
10 the shortest time is eleven months from discovery to the time
11 of decision. And that doesn't include -- that doesn't include
12 the notice that's going to have to go out. That's going to be
13 hotly disputed.

14 And here's the other thing, Your Honor. After this
15 period, what we think is going to happen is you're going to
16 have an eleven-month period where you're going to have
17 discovery certification, spend a ton of money and time and
18 effort that's going to -- that's going to disturb the
19 settlement process. And you're going to deny the motion for
20 class certification. That's what we think is going to happen
21 because when we look at these claims, these claims shouldn't be
22 certified under the Supreme Court law.

23 And again, on page 18 of our submission that we gave
24 to you, we gave you the five elements that we -- we're going to
25 challenge each submission.

1 THE COURT: No. I just said that. And I understand
2 that. But Mr. Slack, I have to assume that you're going to do
3 the same thing perhaps in a different procedural setting
4 without the class action procedure. In other words, to the
5 extent that the ADR mediation process doesn't work for some,
6 the same issues will be presented. If you're making this
7 argument to me to stop the class action, I believe you have
8 to -- you will make the same argument to stop the RKS claimants
9 or any other claimant who doesn't settle. It's the same legal
10 issue, right?

11 MR. SLACK: No, it's not.

12 THE COURT: No?

13 MR. SLACK: And here's why.

14 THE COURT: What's different?

15 MR. SLACK: Here's why. It's a good question, Your
16 Honor, because the way the procedures work is you'll decide a
17 sufficiency hearing first. That is as a matter of law. And
18 the truth is we think we're going to win those. And so you may
19 never get to this issue. You may never, ever get to this
20 issue. And the truth is, Your Honor, that if you do get to the
21 issue, it'll be after you decide the sufficiency hearing and
22 after we then know whether there are going to be people who
23 settle.

24 So look, what I would say is, Your Honor, we should go
25 through the procedures. Let them work. This motion doesn't

1 have to be decided today. And quite frankly, the class
2 certification piece is not going to be decided for eleven
3 months. And that's at the earliest under what a bunch of cases
4 said.

5 THE COURT: I want to let Mr. Ritholtz had his ten
6 minutes, please. Thank you, Mr. Slack. I appreciate your
7 fervor and your argument.

8 MR. RITHOLTZ: Thank you, Your Honor.

9 THE COURT: In that order. No. In reverse order.
10 Go ahead, Mr. Ritholtz.

11 MR. RITHOLTZ: Thank you, Your Honor. Jeffrey
12 Ritholtz for the RKS claimants.

13 So I just want to start by addressing one point
14 about -- because the RKS claimants have come up a lot in the
15 discussion back and forth so far.

16 The RKS claimants are not a monolith in the sense that
17 we represent both large claimants, including claimants who have
18 over 100 million dollars in claims, and small claimants,
19 including those who have under 10,000 in claims. So there are
20 a number of Joes from Peoria that we represent already. So in
21 our view, there is no reason why those other Joes from Peoria
22 who may not have hired counsel yet can't hire us or other
23 counsel to represent them. They're not stranded at this
24 moment.

25 Secondly, we've already heard -- to address a

1 discussion that just occurred, we've already heard from certain
2 of our clients that they won't engage further on the mediation
3 notices or the offers or counteroffers that have been presented
4 until they have clarity on the class action because they're
5 confused as to what the process is going forward, who's going
6 to be their counsel. Is it RKS? Is it Leviton? And they want
7 clarity before they're willing to proceed with respect to
8 negotiation.

9 THE COURT: Well, why can't you provide them clarity?
10 If Mr. Slack is right, they won't have Dubbs and Etkin for at
11 least a year. And they have a year with you and your advice to
12 settle or not settle. What's wrong with that?

13 MR. RITHOLTZ: Well, we certainly could provide them
14 that advice, Your Honor, but they may not -- they may still not
15 be willing to do so if they want that --

16 THE COURT: That's fine. But that's their -- don't
17 tell me that they don't have the benefit of your advice. And
18 so it would seem to me that when you get an offer from PG&E,
19 you will confer with each and every one of them. I will assume
20 you confer one-on-one. You don't do a computerized thing. And
21 you say PG&E is offered you X dollars, Joe. They'll offer you
22 1,000 dollars for your 10,000-dollar claim. Do you want it or
23 not? And Joe will say yes or no. And if Joe says no, I want
24 5,000, then presumably you'll communicate back and Mr. Slack
25 will tell you to stuff it. And then you'll go into the fight.

1 That's the way it happens.

2 MR. RITHOLTZ: Sure. I completely agree with that,
3 Your Honor. But that's also an opportunity that every single
4 claimant has. Each one has the ability to hire counsel.
5 They've filed their claims, so they have some -- they're
6 certainly sophisticated enough to do that. So they're
7 sophisticated enough to hire counsel and have the very same
8 opportunity that all of the RKS claimants have.

9 THE COURT: But I'm talking about your clients. And
10 your clients were sophisticated enough to hire you in the first
11 place. And so if your advice is take the settlement, they
12 either accept your advice or not. And if your advice is don't
13 take the settlement, they can agree with you or disagree. And
14 that's the way it works. You know as well as I that's the way
15 it works. And so if they -- if the client says thanks for your
16 advice, I'm not going to settle with that unreasonable offer
17 Mr. Slack gave me, then you will tell that client what comes
18 next for that client. And what comes next is you'll be
19 defending a sufficiency motion.

20 MR. RITHOLTZ: No, absolutely, Your Honor. The
21 question is only the timing.

22 THE COURT: Okay.

23 MR. RITHOLTZ: Because we're dealing with a scenario
24 now where the ultimate decision on class certification is going
25 to be likely pushed out a year, if not more. And so by the --

1 we're going to end up with an additional overlay of a year
2 delay when we already have procedures in place that are meant
3 to push this -- push the claims forward. By December of this
4 year, we're meant to have objections to all the claims and then
5 proceed to discovery and sufficiency hearings and all of that.

6 So just --

7 THE COURT: Okay. So let's assume that you've got
8 some -- of your several hundred clients, let's assume that some
9 of them -- and it's none of my business whether that's two or
10 500. Some of them are confused. Well, the other ones can
11 still make a rational decision on whether to accept this deal
12 or not. So it's not -- all of them are going to scrap the
13 whole ADR process, right?

14 MR. RITHOLTZ: No, I'm not suggesting they're going to
15 scrap the ADR process necessarily. But --

16 THE COURT: But I'm trying to find out what tale of
17 horrors are. How do your clients -- are they impacted if I
18 grant today's motion? And the only answer I've gotten is some
19 of them will be confused and won't do anything for the next
20 year because they will wait. Okay, that's the choice. But
21 that's part of the component of deciding whether to accept an
22 offer or not.

23 MR. RITHOLTZ: But there's also inevitably going to be
24 a delay, because if we act -- for all of our clients, because
25 yes, some might settle out, but the ones that don't, there's

1 going to be a year before class certification is heard.
2 They're going to want to be heard on that potentially, as Mr.
3 Mr. Dubbs admitted that materiality may be part of that
4 discussion, that goes to the merits of our client's case as
5 well. So they're going to want to be heard on that issue. So
6 it adds additional burden and additional delay on their
7 litigation of the case even though they're not going to
8 necessarily classified.

9 THE COURT: But they might lose too and regret they
10 didn't take the settlement.

11 MR. DUBBS: That's true.

12 THE COURT: In other words, I'll take -- one your
13 clients says I don't like Slack's last offer, let's see them in
14 court. So you come to court. And you call up the guy and say,
15 we just lost the sufficiency argument, you're out of court.
16 And the client says, God, I should have taken that settlement
17 offer. And you say --

18 MR. RITHOLTZ: Well, that could --

19 THE COURT: -- yeah, you could have.

20 MR. RITHOLTZ: That can certainly happen, Your Honor.
21 What I'm suggesting is there's two potential alternatives here.
22 One is you have the procedures that are in place right now, the
23 amendment and objection procedures, where there will -- there's
24 a built in sufficiency, sufficiency objection process that will
25 occur after December of this year. And there will be --

1 whoever is litigating will litigate those sufficiency
2 objections.

3 If, on the other hand, there's a class action in place
4 first, now you have an additional overlay of a class
5 certification procedure that our clients will want to be part
6 of. And that's inevitably going to delay and add burden to our
7 clients to litigate their claims.

8 THE COURT: Okay. I got it. Do you agree with Mr.
9 Slack's timeline or do you think Mr. Dubbs is closer to a
10 realistic timeline?

11 MR. RITHOLTZ: We agree with Mr. Slack. In our
12 experience, these types of class certification motions require
13 significant amount of discovery, including expert discovery.
14 And it will take at least a year, in our view, to resolve
15 these -- to resolve the class certification motion here, which
16 is complex.

17 THE COURT: No, I understand it's complex. I mean,
18 it's complex. But I can think of a couple of things that are
19 different about this case. 1, we have this closed universe of
20 the number of claims. And secondly, there was a -- I think
21 before you were active in the case, there was a negotiated
22 determination of the -- as I recall, Mr. Slack will remember
23 this -- I think nine critical dates where the price changed
24 (audio interference) for the fraud, right?

25 MR. RITHOLTZ: Yes, Your Honor. You froze for a

1 second, so I didn't catch all of that.

2 But I would just add that that there's also -- this
3 case has sixty-seven different securities at issue. Right?

4 THE COURT: I know that. I'm not convinced that
5 that's a difference. To me, whether it's this series bond or
6 that series bond, it's all the subject of the public disclosure
7 or nondisclosure. We don't have to debate that. I understand
8 that that that's a position that you and Mr. Slack believe.
9 I'm just telling you that I'm not persuaded that that is quite
10 as terrible as you believe.

11 But go ahead with anything else you wish to say.

12 MR. RITHOLTZ: Sure, Your Honor. So I think it's just
13 important to recognize that we already have the procedures in
14 place that don't have a lot of the downsides and drawbacks of
15 the 7023 procedure and accomplish a lot of the same goals,
16 because we have -- the amendment objection procedures don't
17 have a class certification requirement. They don't have a
18 notice requirement. They don't have a court approval of
19 settlement requirement. All of those things will add time and
20 expense to this case and will increase the role that the Court
21 has to have in supervising this. We already have procedures in
22 place to deal with these issues that will move things along
23 more efficiently.

24 In addition, so let's take the notice here for
25 example. That's going to need to do -- in a 7023 context,

1 that's going to need to do a lot of work to explain to putative
2 class members what the requirements are for opting out, for
3 example. Do I need an amended claim form? What's the scope of
4 the class? Which securities are in? Which securities are out?
5 Which omissions and misstatements are in and which are out?
6 What if I'm a claimant who traded in some securities that are
7 in the class but some that are out of the class? Am I a class
8 member? Am I -- what if I opt out? Am I half opt out, half
9 class member? There's a lot of complications here that will
10 have to be heavily negotiated and will probably be hotly
11 contested in terms of the notice. So that's a significant
12 issue and a burden. And that's going to add time and expense
13 again to resolution of these claims.

14 You also have in the 7023 procedure, once a class is
15 set, even once the class settles, it could take one to two
16 years for class members to receive their money after the
17 settlement because there's a notice process. There's an
18 allocation procedure that has to get resolved. Class counsel
19 fees have to get resolved, all of which has to be supervised by
20 the Court. And that's going to take a substantial amount of
21 time.

22 Whereas in the amendment of objection procedures, as
23 claimants continue to negotiate with the debtors, the
24 payments -- if they settle individually, the payments get made
25 within fourteen days.

1 THE COURT: All the more reason to settle. You made a
2 very persuasive argument --

3 MR. RITHOLTZ: -- Well, sure, but it's --

4 THE COURT: -- for why not settle. Okay. I got it.
5 I understand your point. I mean, look, you just had it in the
6 briefs. And it helps to put some meat on the bones. And I
7 appreciate your position on it.

8 I want to I want to hear from the other side now and
9 particularly the other opponents of your side. So thank you,
10 Mr. Ritholtz.

11 MR. RITHOLTZ: Okay.

12 THE COURT: Appreciate it.

13 MR. RITHOLTZ: Understood. Thank you, Your Honor.

14 THE COURT: Okay.

15 So Mr. Dubbs, you have given up some time to the other
16 three counsel. So let's go in the order that I talk to them.
17 So Ms. DiCicco and then -- well, we lost somebody I think, and
18 then Ms. Dasaro. Oh, Mr. Schwartz, excuse me. Okay.

19 MR. SCHWARTZ: Your Honor, if you want me to start.

20 THE COURT: I'm sorry. You're right. You're right.
21 You're right. Mr. Schwartz. I am keeping track of my
22 scorecard here, and I turned the page and I forgot you. You're
23 up, Mr. Schwartz.

24 MR. SCHWARTZ: Thank you, Your Honor. And I will try
25 to be brief hopefully --

1 THE COURT: NO, take your time.

2 MR. SCHWARTZ: -- with my time.

3 I think, Your Honor, the most important question I
4 wanted to answer that I expect Your Honor is thinking is why
5 would our clients, who are some of the biggest public pension
6 funds in the country, want to have a class action process?
7 Because unlike the 10,000-dollar claimant in Peoria, obviously
8 our clients are sophisticated and they have at least thus far
9 hired us to deal with this issue.

10 And the answer, Your Honor, is because they are
11 fiduciaries, their mandate is to try to maximize return,
12 minimize costs with an acceptable margin of risk. That's
13 across all assets in the fund. And what that means in the
14 context of a case like this is that the costs associated with
15 having to prosecute their claims on an individual basis make
16 you question the prudence of continuing the case or at least
17 not settling cheap.

18 I can tell Your Honor that based on the offers our
19 clients have received, that I'm not going to say anything Mr.
20 Slack said, our clients will never settle. Yet it is required
21 that they release the claims in the case in the PRSA. That
22 means --

23 THE COURT: I misunderstood what you said.

24 MR. SCHWARTZ: Yeah. I'll say it again. I apologize.
25 You cannot expect that our clients will accept the settlement

1 offer if, in fact, it's conditioned upon releasing of claims
2 outside the state. And therefore, you can expect that our
3 clients will have to find a way to go through the procedures
4 that are currently being articulated although they are
5 extraordinarily burdensome.

6 And I would remind Your Honor your comment at the end
7 of a hearing in June where you said recognize that the
8 claimants, security claimants, have already incurred
9 significant burdens in preparing the forms and hiring me or the
10 others.

11 Let's just walk through what happens if the vaunted
12 ADR procedures don't work. Right? There is this so-called
13 sufficiency objection which I expect will be fifty pages of
14 legal briefing about why none of the claims in this case
15 survived. That's going to require us to respond to that.
16 There will be a reply to that. And I don't think Your Honor
17 will grant all of the theories. And so something will survive.
18 And then you get into discovery. And then you get into summary
19 judgment motions. And then you get into trial most likely.
20 And not only is that for us, but that is for all of -- could be
21 thousand-plus claimants who are not willing to forfeit their
22 claims on the minimalistic offers that have been made so far.

23 And I will tell you, Your Honor, that the letter Mr.
24 Slack quoted was from me. And what I said in that letter was
25 we are not prepared to mediate until we understand what the

1 court's going to rule on the 723, and then we're going to be
2 delighted to mediate and we're going to be delighted to try to
3 settle this case regardless of the 723.

4 The difference, Your Honor, and you probably already
5 perceived this, is if we have the safety net of a class action
6 that's being run by Mr. Dubbs and his team who are quite
7 competent, then if a lowball offer is made us, we are confident
8 we can say we're not interested, we're going to stay in the
9 class. If, on the other hand, a very rich offer is made, then
10 my clients and I -- I can tell you CalSTRS because that letter
11 was from CalSTRS -- is delighted to mediate, is delighted to
12 show up in person and negotiate directly with PG&E if they're
13 willing to do that. But it is not exclusive one to the other.

14 Your Honor, I don't want to belabor this much more,
15 but I would suggest that the economics is what's really driving
16 PG&E's position. It's what's driving ARK's position.

17 THE COURT: I mean, I saw Jerry Malone a long time --
18 or Jerry Maguire. I know it's called show me the money. But
19 Mr. Schwartz, are you saying that if I grant the motion, that
20 PG&E will increase the settlement offer?

21 MR. SCHWARTZ: I would if I were them. I would if I
22 were them.

23 THE COURT: So would I actually.

24 MR. SCHWARTZ: But then it may be enough or it may not
25 be enough. But the point is that the -- and I don't mean to

1 quote Jerry Malone. That wasn't where I was going, Your Honor.
2 But the point is that when you have a case, whether it's these
3 3,200 claimants or it's hundreds of thousand, the reason that
4 the collective redress is so important is because it allows a
5 mechanism to get a judicial relief for a broad spectrum, your
6 Peoria people, our people. And it is an efficient mechanism.
7 It helps the Court avoid hundreds, if not thousands, of
8 separately litigated claims that by themselves are unduly
9 burdensome on the claimants that have to try to process.

10 So I would recommend to Your Honor, you're probably
11 already aware of it, but the American Reserve case that we
12 cited, which is Judge Easterbrook out of the Seventh Circuit,
13 has a very thoughtful analysis of why class actions are
14 appropriate for cases in this nature. It's also been cited
15 with approval in the Mortgage Realty Trust case which --

16 THE COURT: But neither of those cases came out of
17 bankruptcy yet, right? I mean --

18 MR. SCHWARTZ: Yes, they both did.

19 THE COURT: Well, but did they come after two years of
20 an attempt that you've been living with for two years. In
21 other words --

22 MR. SCHWARTZ: No.

23 THE COURT: -- I thought I put out in my question
24 somebody tell me if this has ever been dealt with in any known
25 bankruptcy case before. And I thought the answer was across

1 the board, no, it hasn't been. I mean, I understand your
2 point, but your point -- the point that you made is you wanted
3 judicial involvement for relief in an efficient manner. But it
4 doesn't sound very efficient. But frankly, neither does the
5 other one. Neither does having whatever number of claims
6 survive the mediation process and that become the sufficiency
7 motions. That sounds a little overwhelming also. So the
8 appeal from my point of view is to come up with an alternative.

9 But again, that's for me to decide. And I appreciate
10 your explanation. Okay. Let me hear --

11 MR. SCHWARTZ: May I touch on --

12 THE COURT: Go ahead.

13 MR. SCHWARTZ: -- one more thing, Your Honor?

14 THE COURT: One more thing? Yes.

15 MR. SCHWARTZ: There have been some issues raised
16 about the conflict of interest and questions of that nature. I
17 can share with you that, Your Honor, we don't believe that to
18 be a significant issue. And I can tell you for two reasons
19 why. 1, and this comes out of -- resolution of the equity
20 claims are supposed to be paid in equity. And the resolution
21 of the PSLRA claims must be paid in dollars. So I don't see
22 that as a potential conflict.

23 But on top of that, we know -- New Mexico PARA, we
24 know Greg Trujillo, who is the executive director there, an
25 ethical hard-working fund that is going to do the right thing

1 for themselves and for their peer funds like us. So on that
2 basis, we'd ask, Your Honor allow the 723.

3 THE COURT: Okay. Thank you. All right. Ms.
4 DiCicco?

5 MS. DICICCO: Thank you, Your Honor.

6 I will just second everything Mr. Schwartz said in
7 terms of the merits of the process that we're talking about in
8 terms of the Rule 7023 motion. But I have a few other points I
9 just want to add as an aside.

10 My client did not take the position, as Mr. Slack
11 suggested even suggest my client did but suggested that some
12 claimants did, that they would not negotiate or proceed with
13 the ADR procedures while this motion was pending or even if it
14 had been granted. And our position is -- my client's position
15 is that it is prepared to have been -- in fact, we have a
16 mediation scheduled -- I know that you had asked for how many
17 were scheduled. I don't think the debtors provided that. But
18 we actually do have a mediation scheduled, and we're prepared
19 to go forward with the mediation. I can't tell you I'm
20 terribly hopeful, but we're going to go to it in good faith and
21 try to see what we can get accomplished.

22 But again, the idea is, if that doesn't -- the
23 mediation does not work and we wind up in the bucket of
24 unresolved claimants, which we suspect we may be because we got
25 an offer at your urging in February and we are still not far

1 from where we were in February, then we need this -- we need
2 this other path. And we think this other path via the class
3 process is the most efficient way to get not just our claim but
4 all the claims resolved for all the reasons the parties have
5 noted and Mr. Schwartz has noted.

6 One thing -- although the rate of recent settlements
7 that the debtors have pointed out may be impressive,
8 particularly for the last quarter, the fact that so many have
9 settled when the 7023 motion is pending sort of belies Mr.
10 Slack's argument that the fact that the motion is pending is
11 going to stop people from negotiating. They have actually
12 settled. The settlements are happening. And now, thankfully,
13 finally in late 2023, all claimants have received offers. And
14 we expect that to continue.

15 And whether -- and we have through the end of the
16 year, right? From August -- it's now August 23rd. And from
17 August 23rd even just through December 31st, we're going to be
18 in the same process no matter what. In other words, this
19 process can continue unabated for the little guys, the big
20 guys, and everybody in between. And the settlements can
21 continue to go forward. And if the pace continues, then more
22 claims will be resolved. And that's a good thing. Nobody has
23 a problem with that. And that's going to be regardless of what
24 process we have in place, because under the -- under the
25 amended procedures, nothing's going to happen before December

1 13th. And then we're going to negotiate a briefing schedule.
2 We're going to have a motion -- the sufficiency objection. And
3 that's going to go on for several months through next year
4 anyway.

5 So either way, if there's not a settlement, for
6 example, if my client doesn't mediate to a settlement, we're
7 looking at at least a year away anyway because some portion of
8 this process is going to go forward. And we're fine with that.

9 If the process went only as is with just the
10 procedures, even if the debtors were able to achieve the pace
11 that they've had in the last quarter, they would need another
12 year to whittle those claims down. And that assumes that all
13 of the claims could be resolved, which we know just from the
14 number of joiners that's highly unlikely. So I think we all
15 agree that having another year of just trying to resolve claims
16 through this process is not the right way to go. So we
17 appreciate Your Honor's focus on having an alternative to
18 accomplish that.

19 And unless you have any questions for me, I think
20 that's -- I'll pause there.

21 THE COURT: No. I appreciate your argument on that
22 and the issues you raised.

23 Ms. Dasaro?

24 MS. DASARO: Good afternoon, Your Honor. I echo the
25 sentiments once again of Mr. Schwartz, Mr. DiCicco, and I'll

1 just keep my remarks brief.

2 MassMutual is just slightly farther behind in the
3 process. We only received our initial settlement offer on
4 August 15th, so there's no way we could be set up for mediation
5 at this juncture. We have until September 18th to respond,
6 although as we set forth in our supplemental joinder, the
7 MassMutual funds are likewise willing to and want to try to
8 mediate and/or resolve these claims in advance of costly
9 litigation. But again, in the absence of that, for all the
10 reasons stated by my colleagues, we respectfully submit that
11 the 723 process would be the most efficient and cost effective.

12 And I'll add that MassMutual, much like my colleagues,
13 probably has spent quite a great deal of funds to still be very
14 much in the beginning of a process three years, three years
15 after we filed the claims. And would look forward to the 7023
16 as a backup. And with that, I would request Your Honor,
17 approve the motion.

18 THE COURT: Okay. Thank you.

19 Mr. Dubbs, you're going to be the closer here. And
20 let me just switch positions. One second.

21 Okay. I think you have about fifteen minutes under
22 our discussion before.

23 MR. DUBBS: Thank you, Your Honor. Well, we've heard
24 a lot, and a lot of it is wrong. But the one thing that is
25 important and transcends the back-and-forth among the parties

1 is there's a factor here that is, I would say, almost unique in
2 securities litigation, be it in Bankruptcy Court, District
3 Court or wherever. And that's you have some of the major
4 financial institutions in the United States coming here saying
5 they want a class action. And just as a matter of politics,
6 Most of these institutions are not the wildest fans of class
7 actions. And a lot of them like to go on their own. And when
8 they don't think they can go on their own, and they obviously
9 here don't and they're not so enamored by the process as laid
10 out by Mr. Slack and his colleagues, they look for another
11 process. And so they have gone with the class action with
12 people they know, that's true, in order to get themselves a
13 backup.

14 Now it's a backup as they said. And the idea that
15 CalSTRS is not going to negotiate with someone if they get the
16 right number is frivolous. That the procedure itself and the
17 existence of a class procedure is going to somehow chill all
18 these sophisticated people, that's ridiculous. And if they're
19 going to be confused, be unconfused by all your lawyers. And
20 we'll send them an information thing, which I think we should
21 just so that there's -- nobody can down the road say that they
22 didn't know what was going on because they should know what's
23 going on.

24 So you have a bunch of institutions who basically
25 said -- and some of the largest financial institutions in the

1 United States that they will negotiate with these people.
2 They're not saying they're going to walk away. And the one
3 caveat, which important as it is, and it's come up in a prior
4 hearing and I think -- I was looking at the transcript, it's a
5 bit muddled, is what happens in the relationship between the
6 bankruptcy case against PG&E and the District Court case,
7 against the officers and directors and the underwriters.

8 And to be clear, PG&E EA has demanded before they give
9 you a penny, you must have a release of all your claims in the
10 District Court against the Ds and Os and their large insurance
11 policy and against the underwriters. That's a quid pro quo of
12 pulling in those people into this problem which should not be .
13 It should be separate. But you should know that because that's
14 part of the whole deal. And there's some people who are
15 reacting very negatively to that in part because it's
16 overreaching, in part the numbers aren't right. So it's both
17 things.

18 A few technical points. As to the length of this,
19 since Mr. Slack has put a lot of things in the record, which is
20 fine, I would like to submit after this, and I'll just put it
21 in the record without any rhetoric, a pre-trial order dealing
22 with discovery of all issues, both class issues and merits
23 issues, where the whole class is done in a year or less than my
24 firm was involved in Issued by Judge Rakoff in the Southern
25 District in the World Wrestling case. So it can -- depending

1 upon the judge, surprise, surprise. It can depend upon a lot
2 of things. And it can depend upon how long it takes.

3 Now, as to some of the other issues. Mr. Slack is
4 saying that the PSLA requires that a 12(b)(6) motion be decided
5 before class issues. I want him to send me a case because it's
6 not true.

7 Likewise, the idea that all these different
8 securities, and there are potentially a lot of securities in
9 play, are going to have to be litigated one by one under
10 Goldman, nonsense. It's not there. It's not in the opinion.
11 I defy him to send me something that says it is. I spent nine
12 years on the case. I think I know what's there and that ain't
13 there.

14 What is there and the heart of it is, or one of the
15 hearts of it, is that the Court has to examine drop. And
16 indeed, if there was a message from the Supreme Court, it's
17 that you've got to focus intently on the drops, what happened
18 at the same time as the drops, what can be inferred or not
19 inferred from what people were saying about the drops. So it's
20 drop by drop, not stock by stock. So you find what the drops
21 are. The jury or the trier of fact finds out whether those
22 drops are actionable and what the percentage decline is that's
23 attributable to the fraud. And from those findings, everything
24 else can be deduced. And there are no other issues that have
25 to be decided by the Court. And the rest of it is done by

1 claims administrators with yes, computers, thank goodness.

2 So there has been a lot of misstatements about what
3 the world is like and how complicated this stuff is or is not.
4 And we're not saying it's simple. Let's be clear. But we're
5 not saying it's the burdensome thing that they say it is and
6 that all the parade of horrors that you've heard today and
7 the insinuation that all of these huge pension funds are just
8 going to say we have to wait for the class action when they're
9 presented as fiduciaries with a compensation number that fits
10 what they think it's worth after discussion and what after a
11 mediator decides to bless it.

12 If there are any further questions, I'll be happy to
13 answer them. Thank you so much for your time.

14 THE COURT: No. I have no questions. I want to thank
15 all counsel for --

16 MR. SLACK: Your Honor, can I just take a couple of
17 minutes? I mean, there are a lot of new stuff there. And I
18 can respond to it very quickly. But if you give me a couple of
19 minutes.

20 MS. DICICCO: Before you do -- actually, Your Honor,
21 may I just say one timing issue that I'd like to address in
22 light of what you were saying about --

23 THE COURT: Ms. DiCicco one minute, Slack three
24 minutes. Okay. Go, Ms. DiCicco.

25 MS. DICICCO: Thank you. Thank you. I'll be very

1 quick.

2 On the timing question, we do have under the current
3 procedures a deadline in October for the unresolved claimants
4 to amend their complaint. So the process we have is both that
5 we're going forward with the procedures in terms of the
6 mediation. But if the mediation fails, we then have to go
7 through this other process with that October deadline. That
8 October deadline is important because the parties will have to
9 incur the expense of developing their claims and amending their
10 complaint and their claim to be able to put forth which Mr.
11 Slack would then object to in December.

12 So from a timing perspective on this motion, it's
13 important for the parties to know where the Court ends up on
14 this 7023 motion in time for us to then prepare or not prepare
15 to do that amendment, because I think if we were -- although we
16 go forward to mediation, we may not want to incur the expense
17 if we're then going to be joining into the class to have to
18 amend the claim. So I'm just -- from a time -- I just want to
19 emphasize that timing distinction between the mediation and the
20 amending of the claim and the cost imposed on the result.

21 THE COURT: Is just a polite way of saying would I
22 make sure I rule?

23 MS. DICICCO: Yes, Your Honor, it is. To be frank, it
24 is because it does matter for us the timing because I think
25 otherwise I don't want --

1 THE COURT: What if I do it --

2 MS. DICICCO: -- Your Honor to think that we have
3 to --

4 THE COURT: -- at the conclusion -- what if I do it at
5 the conclusion of the hearing?

6 MS. DICICCO: That would be fabulous. Yes, we'd like
7 that.

8 THE COURT: Really?

9 Mr. Slack, you have three minutes.

10 MR. SLACK: So a couple of things, Your Honor. The
11 first thing is, is that Mr. Dubbs says at the very end, let's
12 take that first, that securities don't matter, the drops
13 matter. But of course, but drops only happen on a
14 security-by-security basis. What happens with an equity
15 security? And that drop is different than what happens with
16 every other security. So what you need to look at, Your Honor,
17 because you have all these debt securities, is what happens to
18 each of those securities which are different. They're all --
19 they all have different -- a debt security has different
20 payment obligations at different timing. And the fact is, is
21 that you're not going to look at an equity drop to decide what
22 is what with a -- with a debt security.

23 And so Mr. Dubbs is just flat-out wrong and he can't
24 show you a case that's going to say that that securities don't
25 matter when you're dealing with this. They do matter. And

1 that's just a matter of fact. The second thing, Your Honor --

2 THE COURT: But wouldn't the expert addressed that.

3 MR. SLACK: Sure. But here's -- well, here's the
4 point, Your Honor, is that if you don't decide the sufficiency
5 hearing and the motion to dismiss first, that expert is going
6 to have to go through each of those sixty-seven securities.
7 What's likely to happen if you do a sufficiency hearing, and
8 that's why the PSRA requires it first, is that Your Honor is
9 going to go and either dismiss the claims as a whole or, if
10 anything's left, it narrows what you have to do in class
11 certification. And that's why there's a staging.

12 And Mr. Dubbs says it's not required. He can't show
13 you a single case in recent memory since the PSRA where that's
14 happened, not one, because it just doesn't happen the way he
15 wants you to do it.

16 Now, Your Honor, the other thing is that everybody's
17 talking about it's taken a long time and we're in a long time.
18 Things are working right now, but that long time, it's really
19 ironic. And sitting here and listening to this -- because
20 you'll remember, Your Honor, you gave me a little bit of a hard
21 time. Some of the claimants have certainly given me a hard
22 time on the fact that we spent a year negotiating with PARA.
23 It's actually the delay that PARA caused by negotiating for a
24 year that's taken this time. And so it's really ironic, Your
25 Honor, that the same people who are complaining about delay and

1 the timing are now supporting hey, we put PARA in there, this
2 is all going to be better when we've negotiated with them for a
3 year.

4 So the last thing I want to say, Your Honor, in my
5 short time is I think there's a better solution in the
6 following respect. I think what should happen, Your Honor, is
7 you let the procedures play out. And if you decide the
8 sufficiency hearing and those issues get narrowed for class
9 cert, this Court can always revisit a class certification issue
10 at that time. And we'll know information. We'll know, number
11 1, how many claims are remaining. We'll know what proofs of
12 claim are remaining, and I don't think there's going to be that
13 many.

14 And the third thing, Your Honor, is I don't think it's
15 going to delay the process a great deal, because the advantage
16 we have is once you decide whether these claims even survive
17 and certainly narrow down both the misrepresentations and the
18 number of securities, that's going to lessen the amount of
19 discovery that's required. And so that is the most efficient
20 way because it doesn't disturb the procedures. It lets those
21 go forward. And then and it -- and then after you've decided
22 the motions to dismiss and have the sufficiency hearing, you
23 can revisit this issue. And I don't think there'll be a
24 tremendous amount of delay because of the advantages you get
25 when you decide that motion first.

1 Anyhow, thank you, Your Honor.

2 THE COURT: Now, Mr. Slack, if it's January and I've
3 deferred or denied the motion for class action without
4 prejudice to renewing it and I deny your -- whether we call it
5 a motion to dismiss or deny your position on the sufficiency
6 hearing, then what? Then when Mr. Dubbs and Mr. Etkin make
7 their fourth class motion, you come in swinging and tell me
8 it's fine but it's going to take another eighteen months?

9 MR. SLACK: Well, here's what I'm going to tell Your
10 Honor, is certainly that is a possibility. But I think it's a
11 small possibility. I think what's more likely, Your Honor, is
12 that you're going to find that the procedures have worked.
13 You're also going to find that, again, more likely that even if
14 Your Honor doesn't grant the motions to dismiss in whole, that
15 you grant them in part and narrow. So it's very rare that what
16 you're going to find is that that is that we haven't settled a
17 lot of these and that you're going to make you're not going to
18 narrow this at the very least or dismiss it as a whole.

19 THE COURT: Okay. The point is some -- again, I
20 didn't fault and you didn't complain if any of the lawyers on
21 the other side made any reference to terms that have been
22 negotiated -- have been part of the mediation process. But my
23 point is that there's reason to believe that, although the ADR
24 procedures do appear to be making progress, that there are
25 going to be some that just aren't going to get settled in the

1 near term. So I believe that what Ms. DiCicco described as
2 likely that has to happen late at the end of the year might
3 happen. And then it seems to me we're back to the question of
4 I denied the first motion for class because it was way too late
5 in the process and about AB1540 was looming and for all the
6 other reasons. But I divide the second one because we -- for a
7 variety of reasons.

8 But then a long time went by. And I don't want to
9 hear who caused the delay. There was a delay. This is
10 no-fault judge here today. I don't want this criticism of
11 perilous lawyers about they caused the delay because they're
12 not complaining that you didn't -- you caused the delay because
13 you didn't accept their offer. It's just a delay.

14 And so the question is, if I take serious -- I take
15 all the arguments seriously. But if I am persuaded by the
16 lawyers this morning who make the pitch for the alternate,
17 well, then it's such a great alternative that it's going to be
18 delayed by several more months.

19 And that's not very conducive to a case that I, by the
20 way, join a number of people that take a great deal of pleasure
21 in realizing how, despite all odds, so much has gone out the
22 door to the fire victims. But nothing has nothing has gone out
23 the door to the fraud victims except the ones who compromised.
24 And that's okay if they all compromise. But if they don't
25 compromise, I personally regret the thought that people who

1 have a legitimate claim for being defrauded in 2015 in 2023 are
2 still listening to an argument that says you might get
3 something that you can be satisfied with in eighteen months.

4 So I just want to say -- I don't want any more
5 argument. I want you just to be mindful of the fact that that
6 weighs heavily on my shoulders in terms of something that I
7 want to facilitate rather than slow down.

8 So Ms. DiCicco, I am not going to take this matter
9 under advisement for three months. I'm not going to rule this
10 morning. I probably will make a ruling very quickly, just an
11 oral ruling, and just set of hearing. I don't -- obviously, I
12 need to reflect on everything we've talked about today and go
13 back and look some more again. But you've all briefed it so
14 thoroughly. And it sounds like it's an easy choice. All I
15 have to do is say granted or denied. But I take it a little
16 more seriously about that. And I intend to do that fairly
17 promptly.

18 And if I deny it, I guess it's a -- it's easy. If I
19 grant it, then the question is what comes next. And I promise
20 you all that I have not made up my mind. I have not made up my
21 mind at the start of the hearing. I haven't made up my mind
22 after the hearing. But I'm not going to sit on this thing for
23 more than a very short period of time.

24 So thank you all for your time and effort. And (audio
25 interference) conclude the hearing.

1 IN UNISON: Thank you, Your Honor.

2 THE COURT: All right. Bye, everybody.

3 (Whereupon these proceedings were concluded)

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C E R T I F I C A T I O N

I, Michael Drake, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ MICHAEL DRAKE, CER-513, CET-513

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Date: August 25, 2023

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